

JMK:WMP/LHE
F. #2013R00145

FILED
CLERK

2017 MAR 20 PM 12: 35

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

----- X

UNITED STATES OF AMERICA

INDICTMENT

CR 17 00144

- against -

Cr. No. _____
(T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18,
U.S.C., §§ 371, 981(a)(1)(C), 1349, 2 and
3551 et seq.; T. 21, U.S.C., § 853(p);
T. 28, U.S.C., § 2461(c))

XIAODONG WU and
TAK YUNG SAMSON TSANG,
also known as "Sam Tsang,"

Defendants.

MATSUMOTO, J.

----- X

THE GRAND JURY CHARGES:

ORENSTEIN, M.J.

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendants and Related Entities

1. The defendant XIAODONG WU, a citizen of the People's Republic of China (the "PRC"), was the founder, the Chief Executive Officer and Chairman of the Board of Directors of China Medical Technologies, Inc. ("China Medical" or "CMED"). WU owned approximately 23 percent of China Medical's outstanding common shares and controlled its operations.

2. The defendant TAK YUNG SAMSON TSANG, also known as "Sam Tsang," was China Medical's Chief Financial Officer and a member of the Board of Directors.

3. China Medical was a Cayman Islands corporation with its principal place of business in the PRC. China Medical claimed to be a medical device company, engaged in the

development, manufacturing and marketing of products intended to diagnose and treat cancers, thyroid disorders, diabetes, hepatitis, human papillomavirus (“HPV”), and a variety of other diseases and disorders. In or about August 2005, China Medical registered its ordinary shares pursuant to Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”) and registered an initial public offering of 7.36 million American Depositary Shares (“ADSs”) at an aggregate offering price of \$99.5 million. In or about 2006, China Medical registered a secondary public offering of 5.7 million ADSs. Until they were delisted in approximately February 2012, China Medical’s ADSs traded on the NASDAQ Global Select Markets, and thereafter on the Over-the-Counter (OTC) markets. China Medical filed for Chapter 15 bankruptcy on or about August 31, 2012.

4. China Medical operated its business through and derived substantially all of its revenues from three subsidiaries: (i) Beijing Yuande Bio-Medical Engineering Co. (“Yuande”), a privately held bio-medical engineering company based in Beijing, PRC that was acquired by China Medical in or about January 2005; (ii) Beijing GP Medical Technologies Co. (“GP Medical”), a privately held molecular diagnostic company based in Beijing, PRC that was acquired by China Medical in or about May 2006; and (iii) Beijing Bio-Ekon Biotechnology Co. (“BBE”), a privately held bio-medical development, manufacturing and marketing company based in Beijing, PRC that was acquired by China Medical in or about July 2007 (collectively, the “CMED Operating Companies”).

5. Beijing Yuanyide Trade Co. Ltd. (“Yuanyide”) was a privately held company incorporated in or about 2009 and based in the PRC. Beijing Hezhong Shilade Technology Co., Ltd. (“Hezhong”) was a privately held company incorporated in or about 2011 and based in the PRC. In or about January 2012, six individuals who previously worked at the

CMED Operating Companies or were affiliated with the defendant XIAODONG WU (collectively, “Co-Conspirators 1 through 6”), individuals whose identities are known to the Grand Jury, purchased a majority of the equity in Yuanyide and Hezhong.

6. Supreme Well Investments Limited (“Supreme Well”) was a privately held British Virgin Islands company incorporated in or about 2005 and based in Hong Kong and the PRC. Supreme Well was purportedly a medical diagnostic equipment company whose banks accounts were controlled by the defendant TAK YUNG SAMSON TSANG and Co-Conspirator 7, an associate of the defendant XIAODONG WU and an individual whose identity is known to the Grand Jury.

II. The Fraudulent Scheme

7. In or about and between January 2005 and November 2012, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, together with others, engaged in a scheme to defraud China Medical’s noteholders and investors through material misrepresentations and omissions relating to, among other things: (i) the use of the approximately \$426 million in proceeds from two note offerings; and (ii) the transfer of a significant portion of the proceeds from the note offerings to entities controlled by or affiliated with WU and TSANG.

8. From approximately 2006 through 2010, China Medical issued three series of notes: (i) on or about November 21, 2006, \$150 million in 3.5 percent convertible senior subordinated notes due in 2011 (the “2011 Notes”); (ii) on or about August 15, 2008, \$276 million in 4 percent convertible senior notes due in 2013 (the “2013 Notes”); and (iii) on or about December 6, 2010, \$150 million in 6.25 percent convertible senior notes due in 2016 (the “2016 Notes”).

9. In the Offering Memorandum and Prospectus Supplement for the 2013 Notes, dated August 11, 2008 and August 12, 2008, respectively, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, together with others, represented that China Medical planned “to use the net proceeds from this offering for general corporate purposes and for the acquisitions of businesses, products and technologies that we believe will complement our existing business . . . Pending their use, we intend to place our net proceeds in short-term bank deposits.” Similarly, in the 2016 Notes Offering Memorandum, dated November 30, 2010, WU and TSANG, together with others, represented that China Medical intended “to use the net proceeds from this offering to repurchase, from time to time, our outstanding [2011 and 2013] Convertible Notes, of which US\$383 million principal amount remained outstanding as of September 30, 2010, to pay for our expenses associated with the capped call transaction into which we are entering in connection with the offer and sale of the [2016] Notes, and for general corporate purposes.” More specifically, in both the 2013 and 2016 offerings, WU and TSANG represented that the funds raised through the note offerings would be invested in the CMED Operating Companies and used to acquire and maintain intellectual property rights, such as Fluorescent in situ Hybridization (“FISH”) technology and Surface Plasmon Resonance (“SPR”) technology, which were used to detect and monitor various diseases and disorders such as cancer and HPV.

10. Contrary to the representations made by the defendants XIAODONG WU and TAK YUNG SAMSON TSANG in the offering memoranda and associated documents, the intellectual property that was the subject of the 2013 and 2016 note offerings was approximately 20 years old and off-patent, and any value it had was minimal. Notably, most of the money raised through the 2013 Notes and the 2016 Notes was remitted to China Medical’s bank

accounts instead of being invested in the CMED Operating Companies, and then transferred by WU and TSANG to entities controlled by WU, TSANG and their co-conspirators. For example, on or about and between November 3, 2006 and December 4, 2008, approximately \$303.75 million of the approximately \$576 million that China Medical raised in the 2011, 2013 and 2016 note offerings was transferred to Supreme Well's bank accounts. Supreme Well's bank accounts that received the \$303.75 million from China Medical were controlled by TSANG and Co-Conspirator 7, an associate of WU. On or about and between March 2007 and December 2010, approximately \$202 million was transferred from Supreme Well to an entity controlled by WU, the identity of which is known to the Grand Jury.

11. As part of the fraudulent scheme, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, misappropriated China Medical's assets through fraudulent equity sales to their co-conspirators. Specifically, in or about January 2012, Co-Conspirators 1 through 6 purchased a majority of the equity in Yuanyide and Hezhong. In or about February 2012, Co-Conspirators 1 through 6, through Yuanyide and Hezhong, purchased approximately 60 percent of the CMED Operating Companies and purged the independent managers and directors of the CMED Operating Companies. Following this equity purchase, Yuanyide owned 15 percent of Yuande, 45 percent of GP Medical and 15 percent of BBE, whereas Hezhong owned 45 percent of Yuande, 15 percent of GP Medical and 45 percent of BBE. Notably, the consideration China Medical received from Yuanyide and Hezhong was substantially less than China Medical had previously paid to acquire some of the same assets. Moreover, Yuanyide and Hezhong were required to pay only five percent of the purchase price at the time they acquired their 60 percent ownership interest in the CMED Operating Companies, and there is no evidence that Yuanyide or Hezhong made any payments toward this five percent down payment. WU and

TSANG concealed this fraudulent transfer of ownership from China Medical's noteholders and shareholders.

12. In addition, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, together with others, sought to conceal the fraudulent scheme through, among other things: (i) causing John Doe 1, an independent director of China Medical and an individual whose identity is known to the Grand Jury, to resign on or about December 16, 2011; (ii) refusing to provide requested information to Auditor 1, China Medical's outside auditor, the identity of which is known to the Grand Jury, and ultimately causing Auditor 1 to resign on or about April 20, 2012; (iii) causing China Medical to stop making public disclosures of material events affecting the value of its securities, as required by law; and (iv) refusing to cooperate with liquidators appointed by the Grand Court of the Cayman Islands after China Medical filed for Chapter 15 bankruptcy protection in the Southern District of New York on or about August 31, 2012.

13. China Medical paid back noteholders of the 2011 Notes in full by the maturity date of November 15, 2011, in part using proceeds from the 2016 Notes. Additionally, on or about and between April 1, 2009 and November 18, 2011, China Medical paid down \$29.5 million of the principal amount of the 2013 Notes. On or about December 15, 2011, China Medical failed to make a \$4.687 million interest payment due on the 2016 Notes. On or about February 15, 2012, China Medical failed to make a \$4.93 million interest payment due on the 2013 Notes. To date, \$246.5 million of the 2013 Notes and \$150 million of the 2016 Notes remain outstanding.

COUNT ONE

(Conspiracy to Commit Securities Fraud)

14. The allegations contained in paragraphs one through 13 are realleged and incorporated as though fully set forth in this paragraph.

15. In or about and between January 2005 and November 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, also known as “Sam Tsang,” together with others, did knowingly and willfully conspire to use and employ manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (i) employing one or more devices, schemes and artifices to defraud; (ii) making one or more untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon one or more noteholders and shareholders in China Medical, in connection with the purchase and sale of the 2013 Notes, the 2016 Notes and ADSs in China Medical, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, contrary to Title 15, United States Code, Sections 78j(b) and 78ff.

16. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, together with others, did commit and cause to be committed, among others, the following:

OVERT ACTS

- a. On or about June 29, 2008, TSANG traveled from the PRC to New York through John F. Kennedy (“JFK”) International Airport in Queens, New York.
- b. On or about August 15, 2008, WU and TSANG caused China Medical to offer \$276 million of four percent convertible senior notes due in 2013.
- c. On or about October 9, 2009, WU traveled from the PRC to New York through JFK International Airport in Queens, New York.
- d. On or about September 25, 2010, WU and TSANG traveled from the PRC to New York through JFK International Airport in Queens, New York.
- e. On or about December 6, 2010, WU and TSANG caused China Medical to offer \$150 million of 6.25 percent convertible senior notes due in 2016.
- f. On or about June 5, 2011, TSANG traveled from the PRC to New York through JFK International Airport in Queens, New York.
- g. On or about December 16, 2011, WU caused John Doe 1 to resign.
- h. On or about December 21, 2011, individuals connected to WU replaced the directors of China Medical’s Hong Kong subsidiaries that owned the CMED Operating Companies.
- i. On or about April 23, 2012, Auditor 1 resigned after WU and TSANG refused to provide information requested by Auditor 1.
- j. On or about May 22, 2012, WU failed to respond to a request by John Doe 2, China Medical’s lone remaining outside independent director and an individual

whose identity is known to the Grand Jury, to call a special meeting of China Medical's Board of Directors to discuss operations, plans for restructuring debt and plans for replacing Auditor 1.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO

(Conspiracy to Commit Wire Fraud)

17. The allegations contained in paragraphs one through 13 are realleged and incorporated as though fully set forth in this paragraph.

18. In or about and between January 2005 and November 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants XIAODONG WU and TAK YUNG SAMSON TSANG, also known as "Sam Tsang," together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud one or more noteholders of the 2013 Notes and 2016 Notes and shareholders in China Medical, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT THREE

(Securities Fraud)

19. The allegations contained in paragraphs one through 13 are realleged and incorporated as though fully set forth in this paragraph.

20. In or about and between January 2005 and November 2012, both dates being approximate and inclusive, within the Southern District of New York, the defendants

XIAODONG WU and TAK YUNG SAMSON TSANG, also known as “Sam Tsang,” together with others, did knowingly and willfully use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing one or more devices, schemes and artifices to defraud; (b) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (c) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon one or more noteholders and shareholders in China Medical, in connection with the purchase and sale of the 2013 Notes, the 2016 Notes and ADSs in China Medical, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

21. The United States hereby gives notice to the defendants that, upon their conviction of any of the offenses charged in Counts One through Three, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of such offenses

22. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

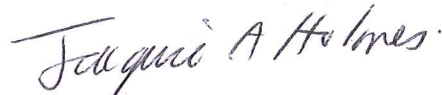
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL



FOREPERSON



BRIDGET M. ROHDE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK
CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

XIAODONG WU and TAK YUNG SAMSON TSANG,

Defendants.

INDICTMENT

(T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18, U.S.C., §§ 371, 981(a)(1)(C), 1349,
2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Seigneur A Holms

Foreperson

Filed in open court this 3/20/17 day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Winston M. Paes and Lauren H. Elbert
Assistant U.S. Attorneys
(718) 254-6023/7570